

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	No. 90A-0058
S.C.V. REALTY AND DEVELOPMENT)	
COMPANY, LIMITED, 1128278,)	
TAXPAYER, AND BAY TRUST REALTY,)	
INC., 0961873, ASSUMER AND/OR)	
TRANSFeree.)	

Appearances:

For Appellant:	William K. Norman Attorney at Law
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For Respondent:	Terry L. Collins Counsel
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OPINION

This appeal is made pursuant to section 19045 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of S.C.V. Realty and Development Company, Limited, et al., against a proposed assessment of additional franchise tax in the amount of \$279,978 for the income year ended January 4, 1984.

This case involves the sale of the stock of a target company (S.C.V. Realty and Development Company, Limited, a corporation formed under the laws of the State of Nevada) from a foreign corporation (Western Coast B.V.) to a corporation formed under the laws of California (Bay Trust Realty, Inc).

After the sale of the stock, Bay Trust Realty, Inc. made an election under IRC section 338 and took such action as might be necessary to cause such election to be effective for California purposes (Revenue and Taxation Code section 24518). The question raised is whether the deemed sale, liquidation and reincorporation called for by section 338 is deemed to occur while the target corporation was owned by the foreign parent (the selling corporation) or after the target corporation was owned by the purchaser (a California corporation). The deemed sale, liquidation and reincorporation of the target corporation in the section 338 election is deemed to occur immediately after the transfer of the stock of the target to the purchasing corporation. Accordingly, any gain which must be recognized as a result of the deemed sale, liquidation of the target corporation should be treated in the manner of the liquidation of a subsidiary of a California corporation. Therefore, we rule for the appellant.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19047 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of S.C.V. Realty and Development Company, Limited, et al., against a proposed assessment of additional franchise tax in the amount of \$279,978 for the income year ended January 4, 1984, be and the same is hereby reversed.

Done at Culver City, California, this 14th day of December, 1994, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Dronenburg, and Ms. Scott present.

Brad Sherman _____, Chairman

Windie Scott* _____, Member

_____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9.